



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

July 16, 1974

The Honorable John Lawhon
District and County Attorney
P. O. Box 44
Denton, Texas 76201

Opinion No. H- 349

Re: Applicability of Texas Fire
Escape Law, Art. 3955 et seq.,
V. T. C. S., to construction of
new school building.

Dear Mr. Lawhon:

You have requested our opinion concerning certain provisions of the Texas Fire Escape Law, Arts. 3955 et seq., V. T. C. S., and their applicability to the construction of a new three story school building. Subparagraphs a, and d, of Art. 3959, V. T. C. S., under the title "Number and Types of Fire Escapes Required," expressly require all school buildings of three stories or more to have an interior fire escape for every 250 pupils or major fraction thereof housed above the first floor. The design and specifications for interior fire escapes are contained in subparagraph b. under the title "Description of Fire Escapes," Art. 3959, V. T. C. S., and Art. 3966, V. T. C. S.

You first ask whether compliance with the requirements established in these provisions of the Fire Escape Law is necessary when they are at variance with local building codes which have been enacted by a city in which a new school building is to be constructed.

The law on this point is clear. "[N]o charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the legislature of this State . . . " Art. 11, § 5, Texas Constitution. The charter powers of a home rule city are subject to the limitation that its charter and ordinances shall contain nothing inconsistent with the general laws

enacted by the Legislature. Brown Cracker & Candy Co. v. City of Dallas, 137 S. W. 342 (Tex. 1911); Janus Films, Inc. v. City of Ft. Worth, 354 S. W. 2d 597 (Tex. Civ. App., Ft. Worth 1962, writ ref'd. n. r. e.); City of Ft. Worth v. McDonald, 293 S. W. 2d 256 (Tex. Civ. App., Ft. Worth 1956, writ ref'd. n. r. e.). Consequently, when local or municipal building codes are at variance with the Texas Fire Escape Law the latter is controlling and compliance with its provisions is mandatory.

In your second question you ask what is meant by the requirement that one fire escape be provided for every "250 pupils or major fraction thereof housed in the building above the first floor." Art. 3959, subparagraph a, V. T. C. S. "Number and Types of Fire Escapes Required."

The 1941 Texas Fire Escape Law is a remedial statute in that it was passed to further an object of public concern. International & G. N. Ry. Co. v. Mallard, 277 S. W. 1051 (Com. App. 1925, judg. adopted). Therefore it is to be liberally construed to effectuate its purpose. 53 TEX. JUR. 2d Statutes §19. In order to best protect pupil occupants from the danger of fire the number of pupils for whom fire escapes must be provided should be determined on the basis of the maximum number which would be housed above the first floor at any time. This maximum number would usually be equivalent to the total capacity of those floors above the first. Since "major fraction thereof" means a majority, one fire escape must be provided if this capacity is between 126 and 375 inclusive, two if between 376 and 625 inclusive, etc.

Your third question is:

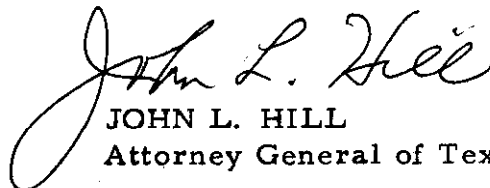
If there is more than one fire escape (or fire stair), are all such stairs required to extend through the roof as is written in the 1941 Texas Fire Escape Law.

Having determined that the state statutes are controlling, we must answer in the affirmative, as Art. 3966, "Interior Type," (6) specifies that "All interior stairway type fire escapes . . . shall extend through [the] roof of the building . . . " (Emphasis added).

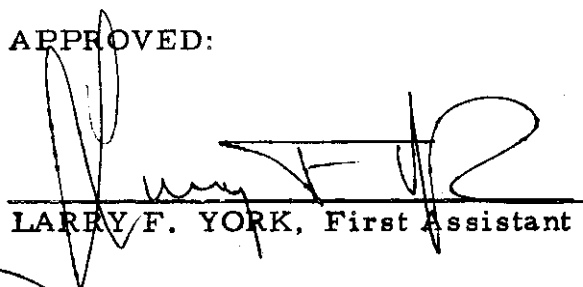
SUMMARY


The Texas Fire Escape Law prevails over local or municipal building codes; therefore in each new three story school building one interior fire escape which extends through the roof must be provided for every 250 pupils or major fraction thereof housed above the first floor.

Very truly yours,


JOHN L. HILL
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APPROVED:


LARRY F. YORK, First Assistant


DAVID M. KENDALL, Chairman
Opinion Committee

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